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10/587,278	07/25/2006	Thomas Kripp	3699	4868
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EXAMINER				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Amendment to the specification is not entered since it is drawn to new matter. In view of new matter rejection with respect to claim 42, specification has been amended.

Applicants argue;

*"The second full paragraph on page 7 of the applicants' originally filed specification that first lists the acceptable auxiliary agents **did indeed omit** "opacifiers" and "perfume oils", which were subsequently recited in the third full paragraph on page 7 of the applicants' specification. This imperfection in the written description has been corrected by the above change in the second full paragraph on page 7 by the insertion of the "opacifiers" and 'perfume oils' in the second full paragraph on page 7. It is respectfully submitted that this change is not "new matter" for the reasons presented in the next paragraphs of these REMARKS.*

The third full paragraph on page 7 of the applicants' originally filed specification begins "The aforesaid constituents are used in amounts usually employed for such purposes, for example..." and includes the wording now present in claim 42 that specifies the amounts of opacifiers, perfume oils, preservatives and dyes that was objected to as being "new matter" ("preservatives" and "dyes" were recited in the originally filed second paragraph). One skilled in the cosmetic arts would clearly understand that the "aforesaid constituents" is an explicit reference to the auxiliary agents recited in the second full paragraph on page 7, not e.g. the active ingredients. Thus if an ingredient were to be recited in the third full paragraph on page 7, but not in the second full paragraph on

page 7, one skilled in the art would understand that that omission was an obvious error in the second full paragraph on page 7 “.

In response to the above argument, page 7 of the original specification also lists weight percent for hair conditioners and hair-care constituents weight percent as 0.1 to 5%, whereas second paragraph at page 7 does not list hair care constituents. Buffering substances at page 7, third paragraph weight percent is 0.1 to 10 % whereas second paragraph does not list any buffering substances.

Second paragraph describes auxiliaries and describes each auxiliary whereas third paragraph does not list the weight percent of all the auxiliaries described at second paragraph. For example, second paragraph describes Vaseline, paraffin oil, cholesterol, pantothenic acid, propellants. There is no description for weight percent of these agents in the third paragraph. There is no nexus between certain ingredients listed in the second paragraph at page 7 and third paragraph at page 7. Therefore amendment of claim 42 with respect to weight percent of opacifiers and perfume oils being 0.01-5 % and cationic resins, lanolin, lanolin alcohols, lanolin alkoxylates and cholesterol being present in total amount of 0.1 to 5 % is new matter (2/10/11) and based upon this amendment to claim 42, amendment of specification dated 8/2/11 is new matter and not entered.

Regarding the advisory action, applicants' argue:

“Page 4 of the advisory action indicates that there is no support in the specification for the lanolin derivatives, which are lanolin alkoxylates. Applicants respectfully disagree with this finding, because lanolin alkoxylates, like lanolin alcohols, are recited in the listings of ingredients

in examples 32 to 36 on page 17 of the originally filed specification. The "lanolin alkoxylates" are recited as the second ingredient in each of the two tables on page 17 and thus are clearly lanolin derivatives described in the originally filed specification. The percentage for the lanolin alkoxylates (2 % in the tables on page 17) is also clearly within the 0.1 and 5 wt. % required by claim 42.

The examples of the hair-care constituents given in the second full paragraph on page 7 include cationic resins, lanolin derivatives and cholesterol. However these are categories of hair-care constituents, except in the case of cholesterol. Thus because of the term "each" in line 7 of the third full paragraph on page 7 of applicants' specification, each of the hair-care ingredients (constituents) in the category of cationic resins or lanolin derivatives that is present in the composition may be present in the composition in an amount of 0.1 to 5 wt. %. However the term "derivatives" in composition claims often leads to their rejection as indefinite. Hence the term "lanolin derivatives" has been replaced by "lanolin, lanolin alcohols, lanolin alkoxylates". Examples 32 and 34 provide the basis for limiting the term "lanolin derivatives" to "lanolin, lanolin alcohols, and alkoxylates". In addition, note that the term "wool grease", which is a respective ingredient of examples 48 and 49, is an alternative term for "lanolin" according to Wikipedia Encyclopedia on the Internet. A generic description of an ingredient in a composition claim

may be limited to a specific ingredient or ingredients that fall within the generic description, as long as the specification discloses the specific ingredients at some point. Thus it should be acceptable to replace "lanolin derivatives" by specific examples disclosed in the applicants' specification. Also because of the term "each" one skilled in the art would understand that each hair-care ingredient can be present in an amount of 0.1 to 5 wt. % “.

In response to the above argument, examples 32-36 describe lanolin alkoxyates and this may can read on lanolin derivatives described at page 6 second paragraph and the percentages is not new matter. However there is no description for lanolin alcohols in the examples. Example 48-49 describes wool grease and this is same as lanolin and thus this does not read on lanolin derivatives since lanolin and lanolin derivatives are not same. Applicants' admit at page 21, first paragraph that except for cholesterol, cationic resins and lanolin derivatives are hair-care constituents and this is same as hair care ingredients listed at page 7, third paragraph. Only dyes lanolin alkoxyates and cationic resins are supported by weight percentages and this is not new matter; however weight percent recited for “opacifiers, perfumes, lanolins and cholesterol are drawn to new mater and it is not entered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA VENKAT whose telephone number is (571)272-0607. The examiner can normally be reached on Monday-Friday, 10:30 AM -9:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID BLANCHARD can be reached on 571-272-0827. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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